

**ADDENDUM TO  
AGREEMENT C-04478850 BETWEEN  
THE KENTUCKY TRANSPORTATION CABINET  
AND  
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT  
BY AND THROUGH ITS  
LOUISVILLE METRO DEPARTMENT OF FAMILY SERVICES, HOUSING &  
COMMUNITY DEVELOPMENT:  
TROLLEY BARN REHABILITATION FOR THE AFRICAN-AMERICAN  
HERITAGE CENTER  
\$1,762,315.75**

This AGREEMENT is made and entered into by and between the Commonwealth of Kentucky, Transportation Cabinet, hereinafter referred to as the "CABINET" and the Louisville/Jefferson County Metro Government acting by and through the Louisville Metro Department of Family Services, Housing & Community Development, hereinafter referred to as the "RECIPIENT". The African American Heritage Foundation, Inc., a Kentucky non-profit corporation, hereinafter referred to as the "FOUNDATION", as a Sub-Recipient under this AGREEMENT, joins herein for the purposes of agreeing to the terms and conditions of this AGREEMENT and agreeing to fulfill its obligations hereunder.

**WITNESSETH:**

**WHEREAS**, the United States Congress approved the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), P. L. 102-240, and amended Chapter 1 of Title 23, United States Code by adding Section 133, which established a Surface Transportation Program; and

**WHEREAS**, Section 1007(a) of the ISTEA, as reaffirmed by the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), P. L. 105-178, which added 23 U.S.C., 133 (d) (2), requires that ten percent of the new Surface Transportation Program funds be available for transportation enhancement activities, and

**WHEREAS**, the Surface Transportation Program established federal funding for transportation enhancement activities ("TE Funds") which are defined under Section 1007 (c) of the ISTEA, and reaffirmed by TEA-21, which amended 23 U.S.C. 101 (a); and

**WHEREAS**, the Federal Highway Administration (FHWA), has approved the Record of Decision, September 2003 for the Louisville-Southern Indiana Ohio River Bridges Project (the "ROD") which includes on Page 44, Section 4.3.4, Rehabilitation of Trolley Barn Buildings in West Louisville and outlines the disbursement of TEN MILLION AND NO/100 DOLLARS (\$10,000,000) under Section 4.3.4 (the "ROD Provision"); and

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**WHEREAS**, the CABINET agreed to provide a minimum of 20% matching funds in the form of toll credits for this project; and

**WHEREAS**, AGREEMENT C-04478850 specified that it should be renewed for an additional two (2) years following its June 30, 2006 termination, and all Parties hereto deem it to be essential that said AGREEMENT be renewed; and

**WHEREAS**, the CABINET and RECIPIENT have previously entered into that certain Agreement C-04478850 (the "Original Agreement") outlining the disbursement of \$2,740,000 by CABINET to RECIPIENT in connection with a portion of the construction costs of the Project (as hereinafter defined); and

**WHEREAS**, all of the parties to this AGREEMENT hereby confirm and agree that (a) the source of all of the \$2,740,000 detailed in the Original Agreement were TE Funds; and (b) all such TE Funds have been disbursed in connection with reimbursement of authorized expenditures for the Project in accordance with the terms of the Original Agreement; and

**WHEREAS**, the CABINET and the FOUNDATION, but not the RECIPIENT, entered into that certain Agreement (the "Cabinet/Foundation Agreement") dated February 11, 2005, which agreement attempted to modify and supplement the terms of the Original Agreement; and

**WHEREAS**, the parties now wish to declare null and void the Cabinet/Foundation Agreement; and

**WHEREAS**, the parties hereto agree and acknowledge that the FOUNDATION incurred liabilities (hereinafter "Outstanding Construction Costs") in the amount of ONE MILLION NINE HUNDRED EIGHTEEN THOUSAND FIFTEEN DOLLARS AND SIXTY FOUR CENTS (\$1,918,015.64) for construction and other activities in excess of the amount of funds permitted pursuant to AGREEMENT C-04478850, that the Contractors and Sub-Contractors who provided the services that form the basis of the Outstanding Construction Costs have not been paid for their services, that some of said Contractors and Sub-Contractors have filed liens against the Project; and

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**WHEREAS**, The CABINET, the RECIPIENT and the FOUNDATION deem it essential that the Outstanding Construction Costs be paid to the Contractors and Sub-Contractors as soon as is possible, and that RECIPIENT insure that all liens pertaining to said Outstanding Construction Costs are removed; and

**WHEREAS**, the RECIPIENT has agreed to accept responsibility for all administration, staffing, maintenance and operation costs for the Project as identified under the AGREEMENT:

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein set forth, the CABINET and the RECIPIENT hereby agree as follows:

**Section 1.**     Outstanding Construction Costs: It is understood and agreed by all parties hereto that the Trolley Barn Rehabilitation for the African American Heritage Center (the "Project") exceeded the total of funds available pursuant to the Original Agreement, in terms of construction and obligated construction expenses, by an amount fixed by the RECIPIENT'S Project Manager as approaching ONE MILLION NINE HUNDRED TWENTY ONE THOUSAND EIGHT HUNDRED NINETY TWO DOLLARS AND THIRTY NINE CENTS (\$1,921,892.39). The parties acknowledge that the entirety of the \$2,740,000.00 available pursuant to Agreement C-04478850 has been expended, with additional expenditures approaching said sum of \$1,921,892.39, with no current ability by the Foundation to pay such obligations. Following correspondence and discussions in September 2006 and continuing until the present time, agreement has been reached wherein the CABINET will advance to the RECIPIENT sufficient funds to pay all allowable obligations.

**Section 2.**     Allowable Outstanding Construction Costs: On October 13, 2006 the RECIPIENT forwarded to the CABINET a binder containing invoices representing the totality of outstanding construction costs. Said invoices totaled \$1,921,892.39. Following review by the CABINET'S external auditors, and review of backup documentation for the submitted invoices, the CABINET reduced the total of invoices by the sum of \$96,420.50, to the sum of \$1,825,222.98. Upon further review by the CABINET'S external auditors, the sum of \$45,962.88 has been disqualified as representing charges that were not authorized by the Project's architect. Additionally, the sum of \$16,944.50 has been disqualified, representing legal fees incurred in relation to

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the stop work order in this matter. Hence the total sum to be advanced by the CABINET to the RECIPIENT is \$1,762,315.75.

**Section 3.** Payment of Outstanding Construction Costs: Upon receipt of the sum specified above, RECIPIENT agrees to make prompt payment of all allowed outstanding construction costs as computed above. RECIPIENT further agrees to timely file with the CABINET documentation of all payments made pursuant to this AGREEMENT. RECIPIENT additionally agrees to promptly certify to the CABINET that all liens filed against the property involved herein have been removed following payment of the outstanding construction costs.

The CABINET does acknowledge that subsequent issues may arise regarding payment of retainage, with the possibility that additional liens may be filed against the property. Cabinet and Recipient agree and acknowledge that neither party has a legal obligation to pay any additional funds for construction costs for the Project. RECIPIENT acknowledge its obligations regarding prompt payment to Contractors upon its receipt from Cabinet of the amount of the outstanding Construction costs, pursuant to this Addendum.

**Section 4.** Repayment to the Cabinet: Following transfer by the CABINET to RECIPIENT of the sum of \$1,762,315.75 for payment of allowable outstanding construction costs on behalf of the FOUNDATION, it shall be the obligation of the FOUNDATION to repay the CABINET in full. There is no obligation of the Recipient for repayment to Cabinet of any said costs. All parties hereto, including without limitation the FOUNDATION, agree and acknowledge that the CABINET shall have no obligation to pay or provide any funds remaining in the allocation included in the relevant section of the ROD until such time as all conditions set forth in this AGREEMENT are met and the entirety of the \$1,762,315.75 has been repaid to the CABINET.

**Section 5.** Renewal of AGREEMENT and Continuation of Project and Funding: As expressly stated above, it is the intention of all parties that AGREEMENT C-04478850, including any modifications or amendments thereto, should be renewed every two years until completion of the designated Project. Toward that end, all parties hereto, the CABINET, the RECIPIENT, and the FOUNDATION, agree to continue discussions toward renewal of said AGREEMENT upon disbursement of funds to the RECIPIENT for payment of outstanding construction costs. The parties hereto agree to

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resume discussions of all relevant topics, including but not limited to, resumption of disbursement of funds pursuant to the ROD, resumption of construction, compression of schedule of disbursement of funds, utilization of debt financing and repayment of loans, as well as any other relevant topics.

All Parties hereto, including the CABINET, the RECIPIENT and the FOUNDATION, specifically agree that the "Cabinet/Foundation Agreement" dated February 11, 2005, and referenced herein above, is terminated, and declared null and void, as of the date of execution of this ADDENDUM to AGREEMENT C-04478850.

**Section 6.** Reporting and Monitoring. The RECIPIENT shall maintain and comply with all reporting requirements outlined by the CABINET and FHWA. The RECIPIENT shall, during the remainder of the construction phase, submit to the CABINET, at least quarterly, progress reports detailing the status of the Project. A sample form for quarterly reporting by the RECIPIENT is attached hereto as Exhibit A. Said form shall be utilized by RECIPIENT for its quarterly reporting obligation. CABINET concurrence must be obtained by the RECIPIENT prior to the awarding of any additional contracts for work or materials to be used on this Project other than the Existing Contracts. CABINET concurrence is not required on any amendment to any Existing Contract, provided that the aggregate costs of any increase or decrease to the Existing Contracts does not exceed the Cost Breakdown, attached hereto as Exhibit C.

All charges to the Project shall be supported by properly executed invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charge. The CABINET or FHWA may require additional documentation at their reasonable discretion.

All checks, invoices, contracts, vouchers, orders or purchasing documents pertaining in whole or in part to the Project shall be clearly identified and readily accessible. The RECIPIENT and the FOUNDATION shall permit the CABINET and or FHWA to conduct periodic site visits to ascertain compliance with federal and state

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regulations. The RECIPIENT shall maintain financial documents for three years after project completion and final payment in accordance with 49 CFR Part 18.

**Section 7.** Environmental Requirements. With the advice and assistance of the CABINET, the RECIPIENT shall ensure that all applicable environmental requirements are complied with including the preparation of appropriate environmental documentation prepared pursuant to the National Environmental Policy Act of 1969 addressing the effects of the proposed transportation enhancement project.

**Section 8.** Restrictive Easements. The RECIPIENT acknowledges that the property is subject to that certain restrictive easement of record in Deed Book 8485, Page 820 in the Office of the Clerk of Jefferson County, Kentucky, as such restrictive easement may be supplemented or modified or clarified from time to time, upon the consent of all of the parties to this AGREEMENT, as well as the FHWA and The Kentucky Heritage Council (“KHC”), the “grantee” under the current restrictive easement.

**Section 9.** Permits and Licenses. The RECIPIENT is responsible for obtaining or causing the FOUNDATION to obtain, all permits and licenses required to initiate, to perform, and to complete all phases of the enhancement project in an appropriate and timely manner.

**Section 10.** Davis-Bacon and Related Acts. Unless waived by the CABINET, the RECIPIENT shall comply with the Davis-Bacon and Related Acts for contracts in excess of \$2,000 for the construction, alteration, and/or repair of public buildings or public works, including painting and decorating. These Acts require all contractors and subcontractors to pay the various classes of laborers and mechanics employed on the contract the wage rates and fringe benefits determined by the Secretary of Labor to be prevailing for corresponding classes of employees engaged on similar projects in the locality. In addition, the Act requires that certain labor standards provisions be specified in the contract awarded to the successful bidder. An applicable wage determination must also be included in the contract documents. The RECIPIENT shall refer to the Davis-Bacon and Related Acts for the requirements under this provision.

**Section 11.** The Contract Work Hours and Safety Standards Act. During the construction of the Project, the RECIPIENT shall comply with the Contract Work Hours

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and Safety Standards Act which contains weekly (after 40 hours) overtime pay requirements and applies to most Federal Contracts which may require or involve the employment of laborers and mechanics, including watchmen and guards. Section 107 of the Act provides health and safety standards on covered construction work which are administered by the Occupational Safety and Health Administration (OSHA). The RECIPIENT shall refer to the Contract Work Hours and Safety Standards Act for the requirements under this provision.

**Section 12.** The Copeland “Anti-Kickback” Act. The RECIPIENT shall comply with the “Anti-Kickback” section of the Copeland Act, which makes it punishable to induce any person working on a federally funded or assisted construction project to “give up any part of the compensation to which he is entitled under his contract of employment.” The RECIPIENT shall refer to the Copeland Act for the requirements under this provision.

**Section 13.** Title VI - Civil Rights Act of 1964. The RECIPIENT shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964 (78 Stat. 252), the Regulations of DOT issued thereunder (CFR Title 49, Subtitle A, Part 21), and the assurance by the RECIPIENT pursuant thereto.

**Section 14.** Equal Employment Opportunity. In connection with the execution of this AGREEMENT, the RECIPIENT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, or disability. The RECIPIENT shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin, age, or disability. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay, or other forms of compensation; and selection of training, including apprenticeship. The RECIPIENT shall incorporate the foregoing requirements of this paragraph in all subcontracts for services covered by this AGREEMENT.

**Section 15.** Disadvantaged Business Enterprise (DBE) Requirements. The RECIPIENT agrees to comply with the DBE Requirements contained within 49 CFR Part 26.

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Assurance. The contractor, sub-recipient or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U. S. Department of Transportation-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the CABINET deems appropriate, Each contract signed with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include this provision.

DBE Prompt Payment Requirement. The RECIPIENT must abide by 49 CFR Part 26.29 with regard to prompt payment mechanisms and retainage payment. If applicable, all contractors must be paid within ten (10) working days after the RECIPIENT has been paid by the CABINET for work performed or services delivered. No recipient or contractor may withhold retainage on any subcontract on this project.

**Section 16. Prohibited Interest.** No member, officer, or employee of the CABINET or the RECIPIENT during his tenure or for one year thereafter shall have any financial interest, direct or indirect, in this AGREEMENT or the proceeds thereof as identified in KRS 45A.340. The CABINET and the RECIPIENT shall comply with the requirements of the Executive Branch Code of Ethics KRS Chapter 11A.

**Section 17. Covenant Against Contingent Fees.** The RECIPIENT warrants that no person, selling agency or other organization has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the CABINET shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from the compensation, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**Section 18. Interest of Members of or Delegates to Congress.** No funds have been or will be paid to a member or delegate to the Congress of the United States in connection with the awarding of this Federal contract. Nor shall any member of or delegate to the Congress of the United State receive any benefit arising out of this federal contract.



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**Section 19.** Standards for the Treatment of Historic Properties. Historic preservation projects shall meet applicable Secretary or the Interiors Standards for the Treatment of Historic Properties, the Standards and Guidelines for Archeology and Historic Preservation, and all other applicable Federal or State historic property requirements prior to the payment of any monies under this AGREEMENT.

**Section 20.** Maintenance as Public Facilities. The RECIPIENT agrees to maintain the facilities in an acceptable condition and for a public purpose in perpetuity. In addition, any applicable landscaping in any project shall be maintained in an acceptable condition to include mowing, trimming, or other maintenance in perpetuity. In the event that the property is, not maintained as a public facility, the RECIPIENT shall reimburse the FHWA for all proceeds provided for in this enhancement project.

**Section 21.** Americans with Disabilities Act. The RECIPIENT agrees to comply with the provisions of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, and other applicable Federal regulations relating hereto, issued by the U.S. Department of Transportation, prohibiting discrimination against otherwise qualified individuals under any program or activity receiving federal financial assistance covered by this AGREEMENT and by providing access to all facilities.

**Section 22.** Applicable Laws. This AGREEMENT shall be in accordance with the laws of the United States Department of Transportation, Federal Highway Administration and the Commonwealth of Kentucky.

**Section 23.** Hold Harmless Clause. The RECIPIENT shall indemnify and hold harmless the CABINET and all of its officers, agents, and employees from all suits, actions, or claims of any character because of any injuries or damages received by any person, persons, or property resulting from negligent implementation of any phase of the Project or occurring on or near the project site.

**Section 24.** Audit and Inspection. The RECIPIENT shall have an audit performed in accordance with the Single Audit Act of 1984, OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations and other appropriate QMB Circulars. The RECIPIENT shall permit the CABINET, the Comptroller General of the United States and Secretary of the United States Department of Transportation, or

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their authorized representatives, to inspect and approve all phases of the project prior to beginning the next phase and all relevant Project data and records. The RECIPIENT shall also permit the above named persons to review audits and working papers or audit the books and accounts of the RECIPIENT pertaining to the Project. The results of the Department of Local Government's audit review should be submitted to the CABINET within 30 days after completion of the audit review for each year containing project information. The contractor, as defined in KRS 45A.030(7), agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this AGREEMENT for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the AGREEMENT shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)07 prior to the execution of the AGREEMENT. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information, which would otherwise be subject to public release if a state government agency were providing the service.

**Section 25. Campaign Finance.** The contractor swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the entity which he/she represents has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the entity which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

**Section 26. Violations.** Pursuant to KRS 45A.485, the contractor shall reveal to the CABINET any final determination of a violation within the previous five (5) year period pursuant to KRS Chapter 139, 136, 141, 337, 338, 341 and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health law, unemployment compensation law, and workers compensation insurance law, respectively.

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The Contractor agrees to be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 for the duration of this AGREEMENT. Failure to reveal a final determination of a violation of the reference statutes or to comply with these statutes for the duration of this AGREEMENT shall be grounds for the cancellation of the agreement and disqualification of the contractor from eligibility for future state contracts for a period of two (2) years.

**Section 27.** Personal Service Contracts and Memoranda of Agreement. If this AGREEMENT comes under the purview of KRS 45A.690 - 45A.725, payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after disapproval of the Government Contract Review Committee unless the decision of the committee is overridden by the Secretary of Finance and Administration Cabinet or agency head, If the agency has been granted delegation authority.

**Section 28.** Disputes. Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the RECIPIENT and the CABINET shall be referred to the Secretary of the Transportation Cabinet of the Commonwealth of Kentucky, or his duly authorized representative, whose decision shall be final.

**Section 29.** Agreement Change. Any proposed change in this AGREEMENT shall be at the mutual consent of the RECIPIENT, and the CABINET, and be evidenced in writing.

**Section 30.** Termination. The CABINET may cancel this AGREEMENT at any time deemed to be in the best interest of the CABINET by giving 30 days written notice of such cancellation to the RECIPIENT. If the AGREEMENT is canceled under this provision, the CABINET shall reimburse the RECIPIENT according to the terms hereof for all expenses incurred under this AGREEMENT to the date of such cancellation. The RECIPIENT reserves the right to cancel this AGREEMENT at any time deemed to be in their best interest by giving 30 days written notice of such cancellation to the CABINET. If the AGREEMENT is canceled under this provision, the CABINET shall reimburse the RECIPIENT for all expenses incurred under this AGREEMENT according to the terms hereof to the date of such cancellation.

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The provisions of Section 24 of this AGREEMENT shall remain in effect even after cancellation by any party.

IN WITNESS WHEREOF, we have hereunto set our hands.

EXAMINED:

COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET

\_\_\_\_\_  
OFFICE OF LEGAL SERVICES

\_\_\_\_\_  
WILLIAM NIGHBERT, SECRETARY

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

EXAMINED:

LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT

\_\_\_\_\_  
ATTORNEY

\_\_\_\_\_  
MAYOR

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DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

AFRICAN AMERICAN

HERITAGE FOUNDATION, INC.

\_\_\_\_\_  
CLEST LANIER, PRESIDENT

DATE: \_\_\_\_\_